

Date of Hearing: August 22, 2011

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS

Paul J. Cook, Chair

SB 806 (Correa) – As Amended: August 15, 2011

SENATE VOTE: 37-0

SUBJECT: State employees: military leave: salary overpayment

SUMMARY: This bill extends the statute of limitations for salary overpayments to state employees on leave for duty with the National Guard. Specifically:

1. If the state determines that an overpayment of compensation has been made to a state employee on a leave of absence for active military duty as a member of the California National Guard, then
2. Administrative action to recover salary overpayment must be initiated within 6 years from the date of overpayment, notwithstanding existing law.

EXISTING LAW: Gov. Code section 19775.2 provides that a state employee who is granted a military leave of absence for active duty, whose continuous state service is not broken by a permanent separation, shall be entitled to receive his or her salary for a period not to exceed thirty calendar days in any one fiscal year.

Gov. Code section 19838 allows for the state to recover overpayment of funds to personnel as long as the proceedings are initiated within three years from the date of the overpayment.

Code of Civil Procedure section 312 states that, "Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

Code of Civil Procedure section 338 provides a three year statute of limitations for civil actions based on fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

Code of Civil Procedure section 343 provides that a civil action for relief not otherwise provided for must be commenced within four years after the cause of action accrues.

FISCAL EFFECT: Unknown at this time.

COMMENTS:

GENESIS OF MEASURE: This measure is in response to a series of articles in the Sacramento Bee and other media alleging salary overpayment to California National Guard ("Guard") members, in particular former top officials at the Guard. According to the Guard, two top former officers have been notified of overpayments one of approximately \$35,000 and one of approximately \$85,000. Both officers have disputed the overpayment, though one has paid the alleged overpayment amount, pending resolution of the matter. According to the Guard it is

broadly auditing its pay records and some small additional overpayments have been discovered, but thus far nothing of the size previously found with the two top former officials.

MEASURE DOES NOT ADDRESS STUDENT LOAN REPAYMENT PROGRAM

ALLEGATIONS: It is important to note that this bill will not address alleged overpayments or fraud in connection with Student Loan Repayment Program funds, overpayments which have also been the subject of media reports. Those funds were not paid as salary; moreover, they were purely federal funds, they were not overpayments made by the state.

EXTENDING THE STATUTE OF LIMITATIONS: EQUITIES

There is in most cases equity in, at some point in the passing of time, disallowing claims. "Statutes of limitation are passed to prevent the production of stale claims when, from the lapse of time, it has become difficult or impossible to furnish the requisite proof to defeat them."¹ However, there are some claims for which there is no statute of limitations, for example, the crime of murder, because we as a society agree that it is never too late for the court system to take up such claims.

The measure presents a balancing of equities question for the members: How long after the date of overpayment is it fair to attempt to recover funds from employees? The measure proposes to move that date back three years, from three to six years post overpayment. If funds were paid to an employee to which the employee was not entitled, it might be argued that there should be no time limit at all on when the recovery might occur, after all, the funds should never have gone to the employee in the first place. Particularly in cases of large overpayments, one could argue that the employee should've known he or she was being over paid.

However, considering the opposing equities and not including cases of fraud, it may be very difficult for employees, particularly enlisted members at more junior ranks, to confirm or refute a notice of overpayment after six years. Six years is a long time to keep records for many people. Servicemembers are likely to have gone through multiple deployments during that time. Moreover, after such a long time it may be extremely difficult for rank and file Guard members to repay even a modest amount overpaid paid to them.

Government Code section 19838 as written balances these equities at three years. This time period is also aligned with the three-year Code of Civil Procedure statute of limitations for fraud or mistake. In addition, the more general "catch all" limitations period in Code of Civil Procedure section 343 is four years. If the bill passes as drafted, there will be a six year statute of limitations only for state employees overpaid for leaves of absence for duty with the Guard. All other state employees will be subject to the general three-year rule. Is the equitable balance so different for members of the Guard that they should be subjected to a statute of limitations double that of other state employees?

Finally, the bill treats Guard members differently than members of other military services. Inconsistently, members of military services other than the Guard who take a leave of absence and are overpaid are still subject to the three year statute.

¹ CA Code of Civil Procedure Section 312, Note 4.

ACCRUAL OF THE STATUTE OF LIMITATIONS:

If parallel interpretations would be made from the civil to the administrative arena, the civil statute of limitations for fraud or mistake, as set forth above, may be found in Code of Civil Procedure section 338. It provides a three year statute of limitations for civil actions based on fraud or mistake. The statute is interpreted to begin to run only after alleged fraud or mistake has been discovered or in the exercise of reasonable diligence should have been discovered. Thus in this case, if the facts regarding overpayments were not known or within the scope of reasonable diligence, the cause of action did not begin to run and an extension of the statute of limitations might not be necessary.

REGISTERED SUPPORT / OPPOSITION:**Support**

None

Opposition

None.

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